

REMARKS**Amendments to the Claims**

Claims 1 – 9 and 11 remain in the application.

Claim 1 has been amended to recite a method of diagnosing a pathological condition of a patient's body tissue. Amended claim 1 also recites that a measurement of intracompartmental pH of the body tissue is used to diagnose the pathological condition. Support for the amendment is found at page 5, lines 8 to 14, of the application as filed, which specifies pathological conditions. The cited paragraph also gives the example of diagnosis of acute compartment syndrome, which is a pathological condition.

Claim 1 has also been amended to specify that the intracompartmental pH is measured directly, as opposed to being determined from a parameter other than pH that is measured, from which parameter the pH is calculated. Direct measurement of pH is support by a fair reading of the specification as a whole.

A corresponding amendment has been made to claim 9, for consistency.

A typographical error in claim 11 has been corrected.

Claims 10 and 12 to 23 have been cancelled.

No new matter has been added by the foregoing amendment.

Information Disclosure Statement

The examiner objected to the Information Disclosure Statement filed 09 May 2005 as not compliant with 37 CFR 1.98(a)(3) because allegedly “the cited reference(s) do not include a date of publication.” That is incorrect. The Information Disclosure Statement included three non-patent references, each in the form of a published paper, and each bearing on its face a date of publication. The Heppenstall paper clearly bears a date of January, 1988 at the top of each odd-numbered page of the paper. The McKinley, Parmlee, and Butler paper clearly bears a date of January, 1998, at the top of each even-numbered page. The McKinley, Ware, Marvin, and Moore paper clearly bears a date of September, 1998, at the top of each even-numbered page. Applicant therefore requests that the examiner consider those references.

Moreover, the citation to subparagraph (3) of 1.98(a) is not understood. Subparagraph (3) deals with references not in the English language, but the cited papers are clearly in English.

Withdrawal of the objection to the Information Disclosure Statement, and an indication that the examiner has considered the cited papers, are requested.

Priority

The Examiner's objection to Applicant's priority claim is not understood. The priority application is U.K. Patent Application 0219068.4 and is in the English language. Therefore, no translation into English is necessary, because the priority application is already in English.

Withdrawal of this objection is requested.

Rejection of claims 20 and 21 under 35 USC 112

Claims 20 and 21 have been cancelled. The rejection of those claims is moot.

Rejection of claims 1 to 23 under 35 USC 102(e)

The Examiner entered a rejection of claims 1 to 23 as anticipated by US 6,567,679 (Khuri).

Claim 1 is amended herein to recite a method of diagnosing a pathological condition of a patient's body tissue. In contrast, Khuri does not teach a method of diagnosing a pathological condition of a patient's body tissue. Rather, Khuri is concerned with monitoring pH in a heart, during cardiac surgery. As explained in column 1, lines 22 to 30, of Khuri, during the cardiac surgery the aorta is clamped, which deprives the myocardium of its blood and nutrient supply. That is done because it is not easy to perform cardiac surgery on a beating heart. Stopping the blood supply to the myocardium will cause acidosis/ischaemia, so on the one hand it is desirable not to keep the blood supply cut off for too long. On the other hand, the surgeon wants to have as much time as possible to operate, without damaging the patient's myocardium. Therefore, Khuri describes how the pH of the myocardium is monitored to determine the degree of tissue acidosis and, thus, the onset of myocardial ischaemia. Hence, as described on column 1, lines 57 to 59, of Khuri, the safe period of oxygen deprivation can be maximized.

Therefore, in Khuri's method, the cause of this acute ischaemia is the surgery itself. This ischaemia does not exist before the surgery, but is instead caused by the surgical act of clamping

the aorta, cutting of the blood supply. Hence, the ischaemia monitored in Khuri is not caused by a disease or injury, and is therefore not a pathological condition.

In contrast, the present invention is concerned with a method of diagnosing a pathological condition by using a pH sensor that is inserted into a tissue. Amended claim 1 is novel over Khuri, because Khuri does not disclose a) a method of diagnosing a pathological condition of a patient's body tissue, or b) using a pH measurement to diagnose the pathological condition. Indeed, diagnosis of a condition does not enter the picture in Khuri, since in cardiac surgery it is already known that clamping the aorta will lead to ischaemia. Khuri is not concerned about diagnosing whether a condition like ischaemia is present, but rather determining when the surgically induced condition becomes dangerous and must be stopped.

Thus, amended claim 1 is directed to a completely different technical field from Khuri – that of diagnosing a pathological condition rather than that of keeping a heart healthy during surgery.

Claims 2 to 9 and 11

Claims 2 to 9 and 11 are all dependent on claim 1, and are deemed patentable at least by virtue of that dependency.

Request for Allowance

Applicant believes that the application is now in condition for allowance, and an early Notice of Allowance of claims 1 – 9 and 11 is earnestly solicited. Should the Examiner have any

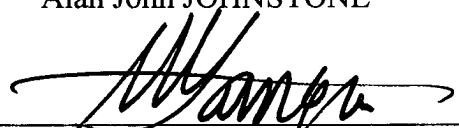
questions or comments regarding Applicants' amendments or this response, he is asked to contact Applicant's undersigned representative at (215) 988-3309.

Please direct all correspondence to the below-listed address.

Respectfully submitted,

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